

## MEMORANDUM

Agenda Item No. 10(A)(2)

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**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners


**DATE:** May 1, 2012

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT** Resolution by the Board of  
County Commissioners  
approving a Interlocal/Settlement  
Agreement between Miami-Dade  
County and the City of Miami  
Gardens

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The accompanying resolution was prepared by the Citizens' Independent Transportation Trust and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.

  
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R. A. Cuevas, Jr.  
County Attorney

RAC/jls

# Memorandum



**Date:** May 1, 2012

**To:** Honorable Chairman Joe Martinez  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor

R.A. Cuevas, Jr.  
County Attorney

**Subject:** Interlocal/Settlement Agreement between Miami-Dade County and the City of Miami Gardens

## Recommendation

It is recommended that the Board of County Commissioners (BCC) approve the attached Interlocal and Settlement Agreement between Miami-Dade County and the City of Miami Gardens as part of the settlement of litigation. The proposed Interlocal and Settlement Agreement will allow the City of Miami Gardens to receive its pro-rata share of Surtax revenue out of the County's 80 percent share of the Charter County Transportation Sales Surtax funds (Surtax) for the fiscal years of 2009-2010, 2010-2011 and 2011-2012.

## Scope

This proposed Interlocal Agreement will provide Surtax funds to the City of Miami Gardens, located within Commission District 1. Because the respective agreements with the City of Doral (District 12) and the Town of Cutler Bay (District 8) include "me too" clauses, approval of this agreement will increase the funding provided to those municipalities as well.

## Fiscal Impact/Funding Source

Approximately \$10.1 million of Charter County Transportation Sales Surtax funds will be available to the City of Miami Gardens for eligible expenses. This funding will come from the County's share of the revenues. In addition, as a result of Miami Gardens receiving three years' worth of surtax funds, approval of this agreement will result in an additional \$1 million of surtax funds going to the City of Doral and an additional \$1.2 million to the Town of Cutler Bay, consistent with the "me too" clause included in the Interlocal Agreements adopted by the BCC on April 3, 2012 and February 7, 2012 respectively. The total value for the settlements with the three cities as a result of this agreement is approximately \$17.3 million. In an abundance of caution, and because actual Surtax revenues have exceeded the budget for the past two years, we have held in reserve the revenue we assumed was at risk of being distributed to the new municipalities. Therefore, these transfers can be made without impairing any currently scheduled projects.

## Track Record/Monitor

The Interlocal Agreement will be monitored by the Office of the Citizens' Independent Transportation Trust (CITT). The CITT was created to monitor the implementation of the Peoples Transportation Plan and to oversee the expenditure of the Surtax.

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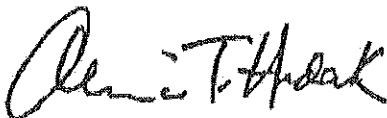
### **Background**

On November 5, 2002, the voters of Miami-Dade County adopted County Ordinance No. 02-116 levying and imposing a one half of one percent Charter County Transit Sales Surtax (Surtax). As part of the Ordinance, 20 percent of the Surtax proceeds shall be distributed annually to those cities existing as of November 5, 2002. The remaining 80 percent is retained by the County to support regional transportation needs.

At the time of the adoption of the Surtax there were 31 eligible municipalities. Subsequently, three new municipalities have incorporated (Miami Gardens, Doral and Cutler Bay). At the May 3, 2011 Board of County Commissioners meeting (Board), the Board approved a motion made by Chairman Martinez to "execute agreements with the three municipalities created since the implementation of the PTP surtax providing funding consistent with the municipal distribution with said funding coming from the County's 80 percent; to provide that these agreements be contingent upon the three applicable municipalities agreeing to a voluntary dismissal of any claims it may have as well as an executed release; to direct the County Administration to bring the appropriate amendments to the County Code necessary to ensure that successor interlocal agreements with all municipalities contain provisions to protect the funding for regional transportation services in the event of future incorporations; and to provide for the consideration of other amendments to municipal MOE requirements."

After negotiations with Miami-Dade County, the City of Miami Gardens has agreed to enter into an Interlocal and Settlement Agreement with Miami-Dade County in order to receive its pro-rata share of Surtax revenue out of the County's share of the Charter County Transportation Sales Surtax funds. This Interlocal and Settlement Agreement will provide the City of Miami Gardens with surtax funding from the County's 80% share for the fiscal years of 2009-2010, 2010-2011 and 2011-2012. The City of Miami Gardens has agreed to dismiss its lawsuit with prejudice upon approval of this agreement and distribution of the surtax funds.

On February 7, 2012, R-148-12 was adopted by the Board approving an Interlocal Agreement with the Town of Cutler Bay, providing for an estimated payment of \$1.278 million in Charter County Transportation Sales Surtax funds and including a clause providing if a municipality entered into an agreement with more favorable terms concerning such a settlement, that the Town of Cutler Bay would receive the same terms. On April 3, 2012, R-311-12 was adopted by the Board approving an Interlocal Agreement with the City of Doral, providing for an estimated payment of \$2.507 million in Charter County Transportation Sales Surtax funds and also including a clause similar to the Town of Cutler Bay concerning future agreements. As a result of that resolution, the Town of Cutler Bay received an additional \$1.294 million. As a result of the current agreement being considered concerning the City of Miami Gardens, the Town of Cutler Bay will now receive, for all three years, a total of \$3.794 million and the City of Doral will receive a total of \$3.516 million. The agreement negotiated with Miami Gardens, includes a clause similar to the clause in the Cutler Bay and Doral Interlocal Agreements, that ensures that Miami Gardens will be subject to the same terms as the other cities should any amendments or modifications result in better conditions.



Alina T. Hudak  
Deputy Mayor/County Manager

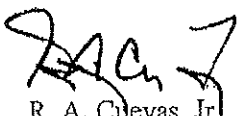


# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**DATE:** May 1, 2012

**FROM:**   
R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No. 10(A)(2)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☒ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous\_\_\_\_) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 10(A) (2)  
5-1-12

RESOLUTION NO. \_\_\_\_\_

RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS APPROVING A SETTLEMENT OF LITIGATION AND AN INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF MIAMI GARDENS IN ORDER THAT THE CITY OF MIAMI GARDENS MAY RECEIVE ITS PRO-RATA SHARE OF SURTAX REVENUE FOR FISCAL YEARS 2009-2010, 2010-2011 AND 2011-2012 OUT OF THE COUNTY'S 80% SHARE OF THE CHARTER COUNTY TRANSPORTATION SALES SURTAX FUNDS; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY AND TO EXERCISE ANY AND ALL RIGHTS CONTAINED THEREIN

**WHEREAS**, On November 5, 2002, the voters of Miami-Dade County adopted Ordinance No. 02-116 levying and imposing a one half of one percent Charter County Transit System Surtax (Surtax) pursuant to the authority of Sec. 212.055 (1) Fla. Stats. (2002); and

**WHEREAS**, twenty (20) percent of Surtax proceeds shall be distributed annually to only those municipalities existing as of November 5, 2002, and the County and the City of Miami Gardens (City), which was incorporated after said date, desire to resolve its pending litigation and execute an interlocal agreement (ILA) in order for the City to receive its pro-rata share of Surtax revenue out of the County's 80 percent share of the Surtax; and

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board approves this settlement of litigation and an Interlocal Agreement between Miami-Dade County and the City

of Miami Gardens in order that the City of Miami Gardens may receive its pro-rata share of surtax revenue for fiscal years 2009-2010, 2010-2011 and 2011-2012 out of the County's 80% share of the Charter County Transportation Sales Surtax Funds; and authorizing the County Mayor or County Mayor's designee to execute the agreement on behalf of the County and to exercise any and all rights contained therein.

The foregoing resolution was offered by Commissioner ,  
who moved its adoption. The motion was seconded by Commissioner  
and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

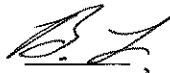
The Chairperson thereupon declared the resolution duly passed and adopted this 1<sup>st</sup> day of May, 2012. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Bruce Libhaber

**SETTLEMENT AGREEMENT AND INTERLOCAL  
AGREEMENT FOR DISTRIBUTION, USE AND  
REPORTING OF CHARTER COUNTY TRANSIT SYSTEM  
SURTAX PROCEEDS LEVIED BY MIAMI-DADE COUNTY**

This Settlement Agreement and Interlocal Agreement ("Agreement") entered into this \_\_\_\_ day of \_\_\_\_\_ 2012, by and between Miami-Dade County, a political subdivision of the State of Florida ("County"), and the City of Miami Gardens, a municipal corporation located within the geographic boundaries of Miami-Dade County, Florida ("City").

WHEREAS, County adopted Ordinance No. 02-116 levying and imposing a one half of one percent Charter County Transit System Surtax ("Surtax") pursuant to the authority of Sec. 212.055(1) Fla.Stats. (2002); and

WHEREAS, twenty (20) percent of surtax proceeds shall be distributed annually to those Cities existing as of November 5, 2002, and the County and the City desire to include those Cities that were incorporated between November 5, 2002 and the date of this agreement in the distribution of surtax proceeds that meet certain conditions (hereinafter referred to collectively as "Eligible Cities") including:

Any surtax proceeds received shall be applied to supplement, not replace the City's general fund support for transportation; and

WHEREAS, County and City agree that City shall receive within 30 days of this agreement becoming effective as defined in section 2.1 in exchange for an executed release and voluntary dismissal with prejudice of CITY OF MIAMI GARDENS v. MIAMI-DADE COUNTY, FLA., Case No. 11-00822-CA-11, its pro-rata share as calculated herein from the County's 80% share of surtax revenue for the fiscal years of 2009-2010, 2010-2011 and 2011-2012 in the form of a lump sum payment which funds may be applied in the City's sole and exclusive discretion without limitation by any provision contained herein to reimburse for eligible expenses incurred by the City since 2002, and subject to Florida Statute Section 212.055; and

WHEREAS, Miami-Dade County Ordinance 02-116 requires that the City, on an annual basis, apply at least twenty (20) percent of any surtax proceeds received to transit uses in the nature of circulator buses, bus shelters, bus pullout bays or other transit-related infrastructure. Any City that cannot apply the twenty (20) percent portion of surtax proceeds it receives as provided in the preceding sentence, may contract with the County for the County to apply such proceeds on a County project that enhances traffic mobility within that City and immediately adjacent areas;

WHEREAS, if the City cannot expend such proceeds in accordance with either of the preceding sentences, then such proceeds shall either carry over and be added to

the overall portion of surtax proceeds to be distributed to the Cities in the ensuing year and shall be utilized solely for the transit uses,

WHEREAS, The City's share of surtax proceeds shall be distributed on a pro rata basis amongst Eligible Cities based on the ratio the City's population bears to the total population in all such Eligible Cities (as adjusted annually in accordance with the Estimates of Population prepared by the Bureau of Economic and Business Research of the University of Florida) that continue to meet the foregoing conditions; and

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, the County and the City agree as follows:

#### **ARTICLE 1 DEFINITIONS**

- 1.1 "ADA" shall mean the Americans with Disabilities Act of 1990, as amended.
- 1.2 "Administrative costs" shall be defined as overhead expenses which are not readily attributable to any one particular project funded in whole or in part by the transit surtax funds.
- 1.3 "BCC" shall mean the Miami-Dade County Board of County Commissioners.
- 1.4 "CITT" shall mean the Citizens' Independent Transportation Trust.
- 1.5 "City" or "Town" shall mean a municipal corporation located within the geographic boundaries of Miami-Dade County, Florida. As used herein "City" shall mean the City of Miami Gardens, Florida.
- 1.6 "Contractor" shall mean any entity, public or private, providing public transit services as described in this Agreement under contract to the City.
- 1.7 "County" shall mean Miami-Dade County, Florida.
- 1.8 "FDOR" shall mean the Florida Department of Revenue.
- 1.9 "Eligible Cities" shall mean cities in existence as of January 2012.
- 1.10 "Fares" shall mean individual transportation fees paid by public transit passengers in accordance with a schedule of fares adopted by County Ordinance.
- 1.11 "Mayor" shall mean Miami-Dade County Mayor
- 1.12 "MDT" shall mean Miami-Dade Transit and authorized representatives thereof.



- 1.13 "OCITT" shall mean the Office of The Citizens' Independent Transportation Trust and authorized representatives thereof.
- 1.14 "Project" shall be defined as transportation and transit projects including operation and maintenance thereof, funded in whole or in part by surtax proceeds.
- 1.15 "Program" shall be defined as transportation and transit projects including operation and maintenance thereof, funded in whole or in part by surtax proceeds.
- 1.16 "Surtax Proceeds" shall mean the funds collected and received by the FDOR from the imposition of the Charter County Transit System Sales Surtax, less the FDOR's cost of administration.
- 1.17 "The Trust" shall include the Citizens' Independent Transportation Trust, and authorized representatives thereof.

## **ARTICLE 2 TERMS**

### **2.1 TERMS OF AGREEMENT**

This agreement shall become effective as follows: (1) ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by the Board of County Commissioners; and approval by the Commission or Council of City. This agreement shall remain in force through September 30, 2012.

### **2.2 PAYMENT**

Within 10 days of this agreement becoming effective, City shall provide an executed release, which shall be kept in trust by the County Attorney until such time as the payment referenced below is made. Within 30 days of County's receipt of said executed release, the City shall receive from the County its pro-rata share as calculated herein from the County's 80% share of surtax revenue for the fiscal years of 2009-2010, 2010-2011 and 2011-2012 in the form of a lump sum payment which funds may be applied in the City's sole and exclusive discretion without limitation by any provision contained herein to reimburse for eligible expenses incurred by the City since 2002, and subject to Florida Statute Section 212.055. Within 2 business days of City receiving the lump sum payment described herein, City shall file a Notice of Voluntary Dismissal with Prejudice in CITY OF MIAMI GARDENS v. MIAMI-DADE COUNTY, FLA., case no. 11-00822 CA 11.

## 2.2 TERMINATION

This Agreement may be terminated for cause by either party upon no less than thirty (30) days written notice to the other party. Said notice shall be delivered by verified facsimile transmission or certified mail, return receipt requested. The noticed party shall have the opportunity to cure any stated cause for termination within the notice period, in which case the terminating party may cancel the termination notice using the same means by which the notice of termination was delivered.

2.3 The County may suspend or terminate the dispersing of surtax proceeds to the City if there is a breach of this Interlocal Agreement until such breach is cured.

2.4 The County reserves the right to cancel unilaterally this Agreement for refusal by the City, after notice to cure by the County, to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes and made or received in conjunction with this Agreement.

## ARTICLE 3 ACCOMPLISHMENT OF PROJECTS

Submission of Proceedings, Contracts and Other Documents: The City shall submit to the CITT and/or OCITT such data, reports, records, contracts and other documents relating to the program as the CITT or OCITT may request. On a quarterly basis, the City shall provide to the OCITT a report regarding the implementation of the projects funded in whole or in part by surtax proceeds. This information is due to the OCITT no more than ten (10) working days after the quarter end.

## ARTICLE 4 ACCOUNTING RECORDS

4.1 Establishment and Maintenance of Accounting Records: The City shall maintain for projects or programs, in conformity with requirements of "Principles for State and Local Governments," separate accounts to be maintained within its existing accounting system or establish independent accounts. Such accounts are referred to herein collectively as the "program account". Documentation of the program account shall be made available to the CITT upon request any time during the period of the Agreement.

4.2 Funds Received or Made Available for Projects: The City shall appropriately record in the program account, and deposit in a bank or trust company which is a member of the Federal Deposit Insurance Corporation, all payments received by it from the County pursuant to this Agreement and all other funds provided for, accruing to, or otherwise received on account of the program, which County payments and other funds are herein collectively referred to as "program funds". The City shall require depositories of program funds to secure continuously and fully all program funds in excess of the amounts insured under Federal plans, or

under State plans which have been approved for the deposit of program funds by the County, by the deposit or setting aside of collateral of the types and in the manner as prescribed by State law for the security of public funds, or as approved by the County.

- 4.4 Documentation of Program Costs: All costs incurred by the program, including any approved services contributed by the City or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

## **ARTICLE 5 AUDIT AND INSPECTION**

- 5.1 Audit Reports: By November 1 a certified report with a disclosure of surtax proceeds expended in accordance with State law, Ordinance No. 02-116, and this Agreement followed by an independent audit report six (6) months after the fiscal year end. The City agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the CITT, including but not limited to site visits and limited scope audits. The City further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the CITT or the Audit and Management Services Department of Miami-Dade County, the Office of the Commission Auditor, the Miami-Dade County Office of the Inspector General or an agent of the County. The City shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of three (3) years from the date the audit report is issued, and shall allow the CITT access to such records and working papers upon request.
- 5.2 Other Requirements: If an audit discloses any significant audit findings relating to any award, including material noncompliance with individual project compliance requirements or reportable conditions in internal controls of the City, the City shall submit as part of the audit package to the CITT a plan for corrective action to eliminate such audit findings or a statement describing the reasons that corrective action is not necessary. The City shall take timely and appropriate corrective action to any audit findings, recommendations, and corrective action plans.
- 5.3 The City shall permit and require its contractors to permit the County and the CITT's authorized representatives to inspect all work, materials, payrolls, records, and to audit the books, records and accounts pertaining to the financing and development of the program.

## **ARTICLE 6 RESTRICTIONS, PROHIBITIONS, CONTROLS, AND LABOR PROVISIONS**

- 6.1 Equal Employment Opportunity: In connection with the carrying out of any project, the City shall not discriminate against any employee or applicant for

employment because of race, age, creed, color, sex, sexual orientation or national origin. The City will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, sexual orientation or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Grantees, recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of CITT assisted contracts.

The City shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development or operation of the project/program, except contracts for standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the project involves installation, construction, demolition, removal, site improvement, or similar work, the City shall post, in conspicuous places available to employees and applicants for employment for project work, notices to be provided by the County setting forth the provisions of the nondiscrimination clause.

- 6.2 Title VI - Civil Rights Act of 1964: Execution of this Interlocal Agreement constitutes a certification that the City will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et. seq.), the Regulations of the Federal Department of Transportation issued thereunder, and the assurance by the City pursuant thereto.
- 6.3 The Americans with Disabilities Act of 1990 (ADA): Execution of this Interlocal Agreement constitutes a certification that the City will comply with all the requirements imposed by the ADA (42 U.S.C. 12102, et. seq.), the regulations of the Federal government issued thereunder, and the assurance by the City pursuant thereto.
- 6.4 Prohibited Interests: Neither the City nor any of its contractors or its subcontractors shall enter into any contract, subcontract, or arrangement in connection with projects or any property included or planned to be included in the projects, in which any member, officer, or employee of the City during his tenure or for two years thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the City, the City with prior approval of the BCC and the CITT, may waive the prohibition contained in this subsection: Provided, that any such present member, officer or employee shall not participate in any action by the City relating to such contract, subcontract, or arrangement. The City shall

insert in all contracts entered into in connection with projects or any property included or planned to be included in any project, and shall require its contractors to insert in each of its subcontracts, the following provision: "No member, officer, or employee of the City during his tenure or for two years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof." The provisions of this subsection shall not be applicable to any agreement between the City and its fiscal depositories, or to any agreement for utility services the rates for which are fixed or controlled by a Governmental entity.

- 6.5 Interest of Members of, or Delegates to, Congress: No member or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

#### **ARTICLE 7 MISCELLANEOUS PROVISIONS**

- 7.1 Environmental Pollution: Execution of this Interlocal Agreement constitutes a certification by the City that the project will be carried out in conformance with all applicable environmental regulations including the securing of any applicable permits. The City will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse the CITT for any loss incurred in connection therewith.
- 7.2 Not Obligated to Third Parties: The County, the BCC Members, the CITT Members and all of the County's officers, agents, and employees shall not be obligated or liable hereunder to any party other than the City. The City, its council and its officers, agents and employees shall not be obligated or liable to any party other than the County or the CITT under this agreement and this agreement shall not create any right of any kind on the part of any person or entity that is not a party to this agreement.
- 7.3 When Rights and Remedies Not Waived: In no event shall the making by the County of any payment to the City constitute or be construed as a waiver by the County of any breach of covenant or any default which may then exist, on the part of the City, and the making of such payment by the County while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the County with respect to such breach or default.
- 7.4 How Agreement Is Affected by Provisions Being Held Invalid: If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- 7.5 State or Territorial Law: Nothing in the Agreement shall require the City to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable State law: Provided, that

if any of the provisions of the Agreement violate any applicable State law, the City will at once notify the OCITT in writing in order that appropriate changes and modifications may be made by the County and the City to the end that the City may proceed as soon as possible with projects.

- 7.6 Use and Maintenance of Project Facilities and Equipment: The City agrees that project facilities and equipment will be used by the City to provide or support public transportation for the period of the useful life of such facilities and equipment as determined in accordance with general accounting principles. The City further agrees to maintain the project facilities and equipment in good working order for the useful life of said facilities or equipment.
- 7.7 Signage: For any project funded in whole or in part by surtax proceeds, The City shall post in a conspicuous location at the job site, structure or vehicle, a sign indicating that surtax proceeds are being used for this project.
- 7.8 Residency Requirement: For any project funded in whole or in part by surtax proceeds, the City may not provide any preferential access accommodations or pricing based on residency.
- 7.9 Administrative Expenses: Consistent with Miami-Dade County Ordinance 06-138 the City shall not expend more than five (5) percent of its municipal share of surtax proceeds on administrative expenses, exclusive of project management and oversight for projects funded by the surtax.
- 7.10 Contractual Indemnity: To the extent provided by law, the City shall indemnify, defend, and hold harmless the County, the BCC Members, the CITT Members and all of the County's officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the City, its agents, or employees, during the performance of the Agreement, except that neither the City, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the County or any of its officers, agents, or employees during the performance of the Agreement.
- 7.11 When the County receives a notice of claim for damages that may have been caused by the City in the performance of services required under this Agreement, the County will immediately forward the claim to the City. The County's failure to promptly notify the City of a claim shall not act as a waiver of any County right herein to require the participation in or defense of the claim by the City.
- 7.12 The County Manager or his designee shall have the authority to distribute and/or withhold surtax funds.

**ARTICLE 8  
AGREEMENT FORMAT**

All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

**ARTICLE 9  
EXECUTION OF AGREEMENT**

This Agreement may be simultaneously executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

**ARTICLE 10  
RESTRICTIONS ON LOBBYING**

- 10.1 Federal: The City agrees that no surtax proceeds have been paid or will be paid by or on behalf of the City, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. If any funds other than federal appropriated funds have been paid by the City to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Interlocal Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The City shall require that the language of this section be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- 10.2 State: No funds received pursuant to this contract may be expended for lobbying the Legislature or a State agency.
- 10.3 County: No funds received pursuant to this contract may be expended for lobbying the County.

**ARTICLE 11  
MODIFICATIONS AND MISCELLANEOUS PROVISIONS**

All notices and other communications required to be remitted pursuant to this Agreement to either party hereto shall be in writing and shall be delivered by

verified facsimile transmission or certified mail, return receipt requested, to the parties at the address indicated below:

FOR MIAMI-DADE COUNTY:  
OFFICE OF THE CITIZENS' INDEPENDENT TRANSPORTATION TRUST  
c/o Executive Director, OCITT  
111 NW 1 Street, Suite 1010  
Miami, FL 33128  
Fax: (305) 375-4605

FOR CITY OF MIAMI GARDENS:

Office of the City Manager  
1515 N.W. 167<sup>th</sup> Street  
Suite 200  
Miami Gardens, FL 33169

11.1 **COMPLETE AND BINDING AGREEMENT** This writing embodies the full and complete agreement of the parties. No other terms, conditions or modifications shall be binding upon the parties unless in writing and signed by the parties.

11.2 **GOVERNING LAW** This Agreement shall be construed in accordance with the laws of the State of Florida.

## **ARTICLE 12 FAVORED NATION STATUS**

The County agrees that if, after the effective date of this agreement, it enters into an agreement with any of the Eligible Cities, which is more favorable than the terms provided for in this Agreement, the City shall be entitled to the same favorable terms as the other Eligible Cities without the need for an amendment to this Agreement.



IN WITNESS WHEREOF, the parties hereto have made and executed this  
Agreement on the respective dates under each signature:

ATTEST:

FOR THE COUNTY:

Miami-Dade County,  
a political subdivision of the State of  
Florida

Harvey Ruvlin, Clerk

By its Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
County Mayor or Mayor's Designee

Date Executed: \_\_\_\_\_

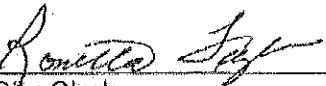
Approved as to Form and Legal Sufficiency

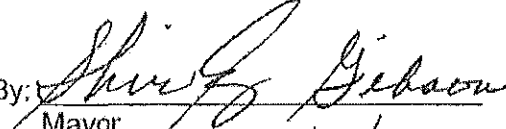
By: Bruce F. Haber  
Assistant County Attorney

ATTEST:

FOR THE CITY:


CITY OF MIAMI GARDENS,  
a Florida municipal corporation

By:   
City Clerk

By:   
Mayor

Date Executed: 4/3/12

Approved as to Form and Legal Sufficiency

By:   
City Attorney

RESOLUTION NO. 2012-55-1650

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, APPROVING A SETTLEMENT IN THE CASE OF CITY OF MIAMI GARDENS VS. MIAMI DADE COUNTY, FLORIDA; CASE NUMBER 11-00822 CA 11; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST RESPECTIVELY THAT CERTAIN SETTLEMENT/INTERLOCAL AGREEMENT IN SUBSTANTIAL FORM AS THAT AGREEMENT ATTACHED HERETO AS EXHIBIT "A"; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in 2011, the City Council authorized the City Attorney and City Manager to initiate litigation against Miami Dade County relating to the City's CITT funds, and

WHEREAS, the litigation has been ongoing, however the parties have agreed in concept to a resolution of that litigation, and

WHEREAS, it is being proposed that the City and the County enter into a settlement agreement/interlocal agreement for payment of CITT funds to the City for the past three (3) fiscal years including fiscal year 2009-2010, 2010-2011, and 2011-2012, and

WHEREAS, the terms of the Settlement Agreement are more particularly outlined in substantial form in Exhibit "A" attached hereto,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA AS FOLLOWS:

Section 1: ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

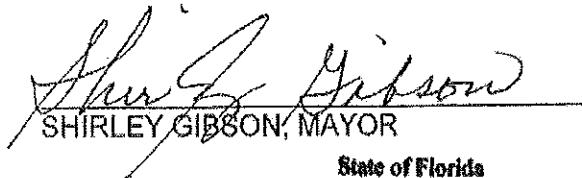
Resolution No. 2012-55-1650

Section 2: AUTHORIZATION: The City Council of the City of Miami Gardens hereby approves a settlement in the case of *City of Miami Gardens vs. Miami Dade County, Florida, Case No. 11-00822 CA 11*. City Council further authorizes the Mayor and City Clerk to execute and attest respectively that certain Settlement/Interlocal Agreement in substantial form as that Agreement attached hereto as exhibit "A".

Section 3: INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain two (2) fully executed copies of the subject Agreement with one to be maintained by the City, and one to be delivered to the Miami Dade County.

Section 4: EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON MARCH 28, 2012.

  
SHIRLEY GIBSON, MAYOR

State of Florida  
County of Miami-Dade

ATTEST:

  
RONETTA TAYLOR, MMC, CITY CLERK

**CERTIFICATION**

I, the undersigned, duly appointed City Clerk of the City of Miami Gardens, Florida, hereby certify that the attached is a true and correct copy of Resolution 2012-55-1650 as shown in the records of the city on file in the office of the city clerk.

Witness, my hand and the corporate seal of the city of Miami Gardens, Florida, this 28 day of APRIL 2012.

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ., CITY ATTORNEY

  
DEPUTY City Clerk  
City of Miami Gardens, Florida

SPONSORED BY: DR. DANNY O. CREW, CITY MANAGER

Moved by: Vice Mayor Gilbert  
Second by: Councilwoman Davis

Resolution No. 2012-55-1650

**VOTE: 7-0**

Mayor Shirley Gibson	<u>X</u> (Yes)	_____ (No)
Vice Mayor Oliver Gilbert, III	<u>X</u> (Yes)	_____ (No)
Councilman Aaron Campbell, Jr.	<u>X</u> (Yes)	_____ (No)
Councilman David Williams Jr	<u>X</u> (Yes)	_____ (No)
Councilwoman Lisa Davis	<u>X</u> (Yes)	_____ (No)
Councilwoman Felicia Robinson	<u>X</u> (Yes)	_____ (No)
Councilman Andre' Williams	<u>X</u> (Yes)	_____ (No)

**SETTLEMENT AGREEMENT AND INTERLOCAL  
AGREEMENT FOR DISTRIBUTION, USE AND  
REPORTING OF CHARTER COUNTY TRANSIT SYSTEM  
SURTAX PROCEEDS LEVIED BY MIAMI-DADE COUNTY**

This Settlement Agreement and Interlocal Agreement ("Agreement") entered into this \_\_\_\_ day of \_\_\_\_\_ 2012, by and between Miami-Dade County, a political subdivision of the State of Florida ("County"), and the City of Miami Gardens, a municipal corporation located within the geographic boundaries of Miami-Dade County, Florida ("City").

WHEREAS, County adopted Ordinance No. 02-116 levying and imposing a one half of one percent Charter County Transit System Surtax ("Surtax") pursuant to the authority of Sec. 212.055(1) Fla.Stats. (2002); and

WHEREAS, twenty (20) percent of surtax proceeds shall be distributed annually to those Cities existing as of November 5, 2002, and the County and the City desire to include those Cities that were incorporated between November 5, 2002 and the date of this agreement in the distribution of surtax proceeds that meet certain conditions (hereinafter referred to collectively as "Eligible Cities") including:

Any surtax proceeds received shall be applied to supplement, not replace the City's general fund support for transportation; and

WHEREAS, County and City agree that City shall receive within 30 days of this agreement becoming effective as defined in section 2.1 in exchange for an executed release and voluntary dismissal with prejudice of CITY OF MIAMI GARDENS v. MIAMI-DADE COUNTY, FLA., Case No. 11-00822-CA-11, its pro-rata share as calculated herein from the County's 80% share of surtax revenue for the fiscal years of 2009-2010, 2010-2011 and 2011-2012 in the form of a lump sum payment which funds may be applied in the City's sole and exclusive discretion without limitation by any provision contained herein to reimburse for eligible expenses incurred by the City since 2002, and subject to Florida Statute Section 212.055; and

WHEREAS, Miami-Dade County Ordinance 02-116 requires that the City, on an annual basis, apply at least twenty (20) percent of any surtax proceeds received to transit uses in the nature of circulator buses, bus shelters, bus pullout bays or other transit-related infrastructure. Any City that cannot apply the twenty (20) percent portion of surtax proceeds it receives as provided in the preceding sentence, may contract with the County for the County to apply such proceeds on a County project that enhances traffic mobility within that City and immediately adjacent areas;

WHEREAS, if the City cannot expend such proceeds in accordance with either of the preceding sentences, then such proceeds shall either carry over and be added to

the overall portion of surtax proceeds to be distributed to the Cities in the ensuing year and shall be utilized solely for the transit uses,

WHEREAS, The City's share of surtax proceeds shall be distributed on a pro rata basis amongst Eligible Cities based on the ratio the City's population bears to the total population in all such Eligible Cities (as adjusted annually in accordance with the Estimates of Population prepared by the Bureau of Economic and Business Research of the University of Florida) that continue to meet the foregoing conditions; and

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, the County and the City agree as follows:

#### **ARTICLE 1 DEFINITIONS**

- 1.1 "ADA" shall mean the Americans with Disabilities Act of 1990, as amended.
- 1.2 "Administrative costs" shall be defined as overhead expenses which are not readily attributable to any one particular project funded in whole or in part by the transit surtax funds.
- 1.3 "BCC" shall mean the Miami-Dade County Board of County Commissioners.
- 1.4 "CITT" shall mean the Citizens' Independent Transportation Trust.
- 1.5 "City" or "Town" shall mean a municipal corporation located within the geographic boundaries of Miami-Dade County, Florida. As used herein "City" shall mean the City of Miami Gardens, Florida.
- 1.6 "Contractor" shall mean any entity, public or private, providing public transit services as described in this Agreement under contract to the City.
- 1.7 "County" shall mean Miami-Dade County, Florida.
- 1.8 "FDOR" shall mean the Florida Department of Revenue.
- 1.9 "Eligible Cities" shall mean cities in existence as of January 2012.
- 1.10 "Fares" shall mean individual transportation fees paid by public transit passengers in accordance with a schedule of fares adopted by County Ordinance.
- 1.11 "Mayor" shall mean Miami-Dade County Mayor
- 1.12 "MDT" shall mean Miami-Dade Transit and authorized representatives thereof.

- 1.13 "OCITT" shall mean the Office of The Citizens' Independent Transportation Trust and authorized representatives thereof.
- 1.14 "Project" shall be defined as transportation and transit projects including operation and maintenance thereof, funded in whole or in part by surtax proceeds.
- 1.15 "Program" shall be defined as transportation and transit projects including operation and maintenance thereof, funded in whole or in part by surtax proceeds.
- 1.16 "Surtax Proceeds" shall mean the funds collected and received by the FDOR from the imposition of the Charter County Transit System Sales Surtax, less the FDOR's cost of administration.
- 1.17 "The Trust" shall include the Citizens' Independent Transportation Trust, and authorized representatives thereof.

## **ARTICLE 2 TERMS**

### **2.1 TERMS OF AGREEMENT**

This agreement shall become effective as follows: (1) ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by the Board of County Commissioners; and approval by the Commission or Council of City. This agreement shall remain in force through September 30, 2012.

### **2.2 PAYMENT**

Within 10 days of this agreement becoming effective, City shall provide an executed release, which shall be kept in trust by the County Attorney until such time as the payment referenced below is made. Within 30 days of County's receipt of said executed release, the City shall receive from the County its pro-rata share as calculated herein from the County's 80% share of surtax revenue for the fiscal years of 2009-2010, 2010-2011 and 2011-2012 in the form of a lump sum payment which funds may be applied in the City's sole and exclusive discretion without limitation by any provision contained herein to reimburse for eligible expenses incurred by the City since 2002, and subject to Florida Statute Section 212.055. Within 2 business days of City receiving the lump sum payment described herein, City shall file a Notice of Voluntary Dismissal with Prejudice in CITY OF MIAMI GARDENS v. MIAMI-DADE COUNTY, FLA., case no. 11-00822 CA 11.



## 2.2 TERMINATION

This Agreement may be terminated for cause by either party upon no less than thirty (30) days written notice to the other party. Said notice shall be delivered by verified facsimile transmission or certified mail, return receipt requested. The noticed party shall have the opportunity to cure any stated cause for termination within the notice period, in which case the terminating party may cancel the termination notice using the same means by which the notice of termination was delivered.

2.3 The County may suspend or terminate the dispersing of surtax proceeds to the City if there is a breach of this Interlocal Agreement until such breach is cured.

2.4 The County reserves the right to cancel unilaterally this Agreement for refusal by the City, after notice to cure by the County, to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes and made or received in conjunction with this Agreement.

## ARTICLE 3 ACCOMPLISHMENT OF PROJECTS

Submission of Proceedings, Contracts and Other Documents: The City shall submit to the CITT and/or OCITT such data, reports, records, contracts and other documents relating to the program as the CITT or OCITT may request. On a quarterly basis, the City shall provide to the OCITT a report regarding the implementation of the projects funded in whole or in part by surtax proceeds. This information is due to the OCITT no more than ten (10) working days after the quarter end.

## ARTICLE 4 ACCOUNTING RECORDS

4.1 Establishment and Maintenance of Accounting Records: The City shall maintain for projects or programs, in conformity with requirements of "Principles for State and Local Governments," separate accounts to be maintained within its existing accounting system or establish independent accounts. Such accounts are referred to herein collectively as the "program account". Documentation of the program account shall be made available to the CITT upon request any time during the period of the Agreement.

4.2 Funds Received or Made Available for Projects: The City shall appropriately record in the program account, and deposit in a bank or trust company which is a member of the Federal Deposit Insurance Corporation, all payments received by it from the County pursuant to this Agreement and all other funds provided for, accruing to, or otherwise received on account of the program, which County payments and other funds are herein collectively referred to as "program funds". The City shall require depositories of program funds to secure continuously and fully all program funds in excess of the amounts insured under Federal plans, or

under State plans which have been approved for the deposit of program funds by the County, by the deposit or setting aside of collateral of the types and in the manner as prescribed by State law for the security of public funds, or as approved by the County.

- 4.4 Documentation of Program Costs: All costs incurred by the program, including any approved services contributed by the City or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

## **ARTICLE 5 AUDIT AND INSPECTION**

- 5.1 Audit Reports: By November 1 a certified report with a disclosure of surtax proceeds expended in accordance with State law, Ordinance No. 02-116, and this Agreement followed by an independent audit report six (6) months after the fiscal year end. The City agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the CITT, including but not limited to site visits and limited scope audits. The City further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the CITT or the Audit and Management Services Department of Miami-Dade County, the Office of the Commission Auditor, the Miami-Dade County Office of the Inspector General or an agent of the County. The City shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of three (3) years from the date the audit report is issued, and shall allow the CITT access to such records and working papers upon request.
- 5.2 Other Requirements: If an audit discloses any significant audit findings relating to any award, including material noncompliance with individual project compliance requirements or reportable conditions in internal controls of the City, the City shall submit as part of the audit package to the CITT a plan for corrective action to eliminate such audit findings or a statement describing the reasons that corrective action is not necessary. The City shall take timely and appropriate corrective action to any audit findings, recommendations, and corrective action plans.
- 5.3 The City shall permit and require its contractors to permit the County and the CITT's authorized representatives to inspect all work, materials, payrolls, records, and to audit the books, records and accounts pertaining to the financing and development of the program.

## **ARTICLE 6 RESTRICTIONS, PROHIBITIONS, CONTROLS, AND LABOR PROVISIONS**

- 6.1 Equal Employment Opportunity: In connection with the carrying out of any project, the City shall not discriminate against any employee or applicant for

employment because of race, age, creed, color, sex, sexual orientation or national origin. The City will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, sexual orientation or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Grantees, recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of CITT assisted contracts.

The City shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development or operation of the project/program, except contracts for standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the project involves installation, construction, demolition, removal, site improvement, or similar work, the City shall post, in conspicuous places available to employees and applicants for employment for project work, notices to be provided by the County setting forth the provisions of the nondiscrimination clause.

- 6.2 Title VI - Civil Rights Act of 1964: Execution of this Interlocal Agreement constitutes a certification that the City will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et. seq.), the Regulations of the Federal Department of Transportation issued thereunder, and the assurance by the City pursuant thereto.
- 6.3 The Americans with Disabilities Act of 1990 (ADA): Execution of this Interlocal Agreement constitutes a certification that the City will comply with all the requirements imposed by the ADA (42 U.S.C. 12102, et. seq.), the regulations of the Federal government issued thereunder, and the assurance by the City pursuant thereto.
- 6.4 Prohibited Interests: Neither the City nor any of its contractors or its subcontractors shall enter into any contract, subcontract, or arrangement in connection with projects or any property included or planned to be included in the projects, in which any member, officer, or employee of the City during his tenure or for two years thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the City, the City with prior approval of the BCC and the CITT, may waive the prohibition contained in this subsection: Provided, that any such present member, officer or employee shall not participate in any action by the City relating to such contract, subcontract, or arrangement. The City shall

insert in all contracts entered into in connection with projects or any property included or planned to be included in any project, and shall require its contractors to insert in each of its subcontracts, the following provision: "No member, officer, or employee of the City during his tenure or for two years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof." The provisions of this subsection shall not be applicable to any agreement between the City and its fiscal depositories, or to any agreement for utility services the rates for which are fixed or controlled by a Governmental entity.

- 6.5 Interest of Members of, or Delegates to, Congress: No member or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

#### **ARTICLE 7 MISCELLANEOUS PROVISIONS**

- 7.1 Environmental Pollution: Execution of this Interlocal Agreement constitutes a certification by the City that the project will be carried out in conformance with all applicable environmental regulations including the securing of any applicable permits. The City will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse the CITT for any loss incurred in connection therewith.
- 7.2 Not Obligated to Third Parties: The County, the BCC Members, the CITT Members and all of the County's officers, agents, and employees shall not be obligated or liable hereunder to any party other than the City. The City, its council and its officers, agents and employees shall not be obligated or liable to any party other than the County or the CITT under this agreement and this agreement shall not create any right of any kind on the part of any person or entity that is not a party to this agreement.
- 7.3 When Rights and Remedies Not Waived: In no event shall the making by the County of any payment to the City constitute or be construed as a waiver by the County of any breach of covenant or any default which may then exist, on the part of the City, and the making of such payment by the County while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the County with respect to such breach or default.
- 7.4 How Agreement Is Affected by Provisions Being Held Invalid: If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- 7.5 State or Territorial Law: Nothing in the Agreement shall require the City to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable State law: Provided, that

if any of the provisions of the Agreement violate any applicable State law, the City will at once notify the OCITT in writing in order that appropriate changes and modifications may be made by the County and the City to the end that the City may proceed as soon as possible with projects.

- 7.6 Use and Maintenance of Project Facilities and Equipment: The City agrees that project facilities and equipment will be used by the City to provide or support public transportation for the period of the useful life of such facilities and equipment as determined in accordance with general accounting principles. The City further agrees to maintain the project facilities and equipment in good working order for the useful life of said facilities or equipment.
- 7.7 Signage: For any project funded in whole or in part by surtax proceeds, The City shall post in a conspicuous location at the job site, structure or vehicle, a sign indicating that surtax proceeds are being used for this project.
- 7.8 Residency Requirement: For any project funded in whole or in part by surtax proceeds, the City may not provide any preferential access accommodations or pricing based on residency.
- 7.9 Administrative Expenses: Consistent with Miami-Dade County Ordinance 06-138 the City shall not expend more than five (5) percent of its municipal share of surtax proceeds on administrative expenses, exclusive of project management and oversight for projects funded by the surtax.
- 7.10 Contractual Indemnity: To the extent provided by law, the City shall indemnify, defend, and hold harmless the County, the BCC Members, the CITT Members and all of the County's officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the City, its agents, or employees, during the performance of the Agreement, except that neither the City, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the County or any of its officers, agents, or employees during the performance of the Agreement.
- 7.11 When the County receives a notice of claim for damages that may have been caused by the City in the performance of services required under this Agreement, the County will immediately forward the claim to the City. The County's failure to promptly notify the City of a claim shall not act as a waiver of any County right herein to require the participation in or defense of the claim by the City.
- 7.12 The County Manager or his designee shall have the authority to distribute and/or withhold surtax funds.

**ARTICLE 8  
AGREEMENT FORMAT**

All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

**ARTICLE 9  
EXECUTION OF AGREEMENT**

This Agreement may be simultaneously executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

**ARTICLE 10  
RESTRICTIONS ON LOBBYING**

- 10.1 Federal: The City agrees that no surtax proceeds have been paid or will be paid by or on behalf of the City, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. If any funds other than federal appropriated funds have been paid by the City to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Interlocal Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The City shall require that the language of this section be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- 10.2 State: No funds received pursuant to this contract may be expended for lobbying the Legislature or a State agency.
- 10.3 County: No funds received pursuant to this contract may be expended for lobbying the County.

**ARTICLE 11  
MODIFICATIONS AND MISCELLANEOUS PROVISIONS**

All notices and other communications required to be remitted pursuant to this Agreement to either party hereto shall be in writing and shall be delivered by

verified facsimile transmission or certified mail, return receipt requested, to the parties at the address indicated below:

FOR MIAMI-DADE COUNTY:  
OFFICE OF THE CITIZENS' INDEPENDENT TRANSPORTATION TRUST  
c/o Executive Director, OCITT  
111 NW 1 Street, Suite 1010  
Miami, FL 33128  
Fax: (305) 375-4605

FOR CITY OF MIAMI GARDENS:  
Office of the City Manager  
1515 N.W. 167<sup>th</sup> Street  
Suite 200  
Miami Gardens, FL 33169

- 11.1 **COMPLETE AND BINDING AGREEMENT** This writing embodies the full and complete agreement of the parties. No other terms, conditions or modifications shall be binding upon the parties unless in writing and signed by the parties.
- 11.2 **GOVERNING LAW** This Agreement shall be construed in accordance with the laws of the State of Florida.

#### **ARTICLE 12 FAVORED NATION STATUS**

The County agrees that if, after the effective date of this agreement, it enters into an agreement with any of the Eligible Cities, which is more favorable than the terms provided for in this Agreement, the City shall be entitled to the same favorable terms as the other Eligible Cities without the need for an amendment to this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature:

ATTEST:

FOR THE COUNTY:

Miami-Dade County,  
a political subdivision of the State of  
Florida

Harvey Ruvin, Clerk

By its Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
County Mayor or Mayor's Designee

Date Executed: \_\_\_\_\_

Approved as to Form and Legal Sufficiency

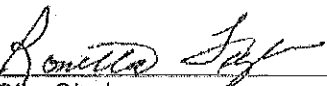
By: \_\_\_\_\_  
Assistant County Attorney

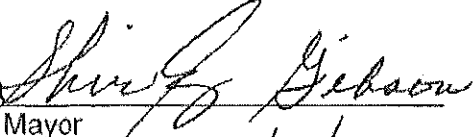


ATTEST:

FOR THE CITY:


CITY OF MIAMI GARDENS,  
a Florida municipal corporation

By:   
City Clerk

By:   
Mayor

Date Executed: 4/3/12

Approved as to Form and Legal Sufficiency

By:   
City Attorney

RESOLUTION NO. 2012-55-1650

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, APPROVING A SETTLEMENT IN THE CASE OF CITY OF MIAMI GARDENS VS. MIAMI DADE COUNTY, FLORIDA; CASE NUMBER 11-00822 CA 11; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST RESPECTIVELY THAT CERTAIN SETTLEMENT/INTERLOCAL AGREEMENT IN SUBSTANTIAL FORM AS THAT AGREEMENT ATTACHED HERETO AS EXHIBIT "A"; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in 2011, the City Council authorized the City Attorney and City Manager to initiate litigation against Miami Dade County relating to the City's CITT funds, and

WHEREAS, the litigation has been ongoing, however the parties have agreed in concept to a resolution of that litigation, and

WHEREAS, it is being proposed that the City and the County enter into a settlement agreement/interlocal agreement for payment of CITT funds to the City for the past three (3) fiscal years including fiscal year 2009-2010, 2010-2011, and 2011-2012, and

WHEREAS, the terms of the Settlement Agreement are more particularly outlined in substantial form in Exhibit "A" attached hereto,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA AS FOLLOWS:

Section 1: ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

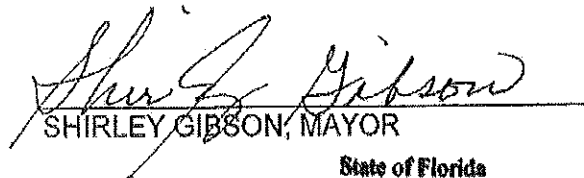
Resolution No. 2012-55-1650

Section 2: AUTHORIZATION: The City Council of the City of Miami Gardens hereby approves a settlement in the case of *City of Miami Gardens vs. Miami Dade County, Florida, Case No. 11-00822 CA 11*. City Council further authorizes the Mayor and City Clerk to execute and attest respectively that certain Settlement/Interlocal Agreement in substantial form as that Agreement attached hereto as exhibit "A".

Section 3: INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain two (2) fully executed copies of the subject Agreement with one to be maintained by the City, and one to be delivered to the Miami Dade County.

Section 4: EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON MARCH 28, 2012.

  
SHIRLEY GIBSON, MAYOR

State of Florida  
County of Miami-Dade

ATTEST:

  
RONETTA TAYLOR, MMC, CITY CLERK

**CERTIFICATION**

I, the undersigned, duly appointed City Clerk of the City of Miami Gardens, Florida, hereby certify that the attached is a true and correct copy of R 2012-55-1650 as shown in the records of the city on file in the office of the city clerk.

Witness, my hand and the corporate seal of the city of Miami Gardens, Florida, this 30 day of APRIL 2012.

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ., CITY ATTORNEY

  
Deputy City Clerk  
City of Miami Gardens, Florida

SPONSORED BY: DR. DANNY O. CREW, CITY MANAGER

Moved by: Vice Mayor Gilbert  
Second by: Councilwoman Davis

Resolution No. 2012-55-1650

**VOTE: 7-0**

Mayor Shirley Gibson	<u>X</u> (Yes)	_____ (No)
Vice Mayor Oliver Gilbert, III	<u>X</u> (Yes)	_____ (No)
Councilman Aaron Campbell, Jr.	<u>X</u> (Yes)	_____ (No)
Councilman David Williams Jr	<u>X</u> (Yes)	_____ (No)
Councilwoman Lisa Davis	<u>X</u> (Yes)	_____ (No)
Councilwoman Felicia Robinson	<u>X</u> (Yes)	_____ (No)
Councilman Andre' Williams	<u>X</u> (Yes)	_____ (No)



## Memorandum



**To:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**From:** Charles Scurr, Executive Director *C. Scurr*

**Date:** April 20, 2012

**Re: CITT AGENDA ITEM 7C:**

RESOLUTION BY THE CITIZENS' INDEPENDENT TRANSPORTATION TRUST (CITT) RECOMMENDING THAT THE BOARD OF COUNTY COMMISSIONERS (BCC), APPROVE A SETTLEMENT OF LITIGATION AND AN INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF MIAMI GARDENS IN ORDER THAT THE CITY OF MIAMI GARDENS MAY RECEIVE ITS PRO-RATA SHARE OF SURTAX REVENUE FOR FISCAL YEARS 2009-2010, 2010-2011 AND 2011-2012 OUT OF THE COUNTY'S 80% SHARE OF THE CHARTER COUNTY TRANSPORTATION SALES SURTAX FUNDS; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY AND TO EXERCISE ANY AND ALL RIGHTS CONTAINED THEREIN (CAO - BCC Legislative File No. 120774)

On April 18, 2012, the CITT voted (9-0) to forward a favorable recommendation to the Board of County Commissioners (BCC) for the approval of the above referenced item, CITT Resolution No. 12-047. The vote was as follows:

Hon. Linda Zilber, Chairperson – Aye  
Paul J. Schwiep, Esq., 1st Vice Chairperson – Absent  
Hon. Anna E. Ward, Ph.D., 2nd Vice Chairperson – Aye

Christopher Benjamin, Esq. – Absent  
David Concepcion – Absent  
Glenn J. Downing, CFP® – Aye  
Alfred J. Holzman – Absent  
Miles E. Moss, P.E. – Aye  
Marilyn Smith – Absent

Harold Braynon, Jr. – Aye  
Joseph Curbelo – Aye  
Peter L. Forrest – Aye  
Prakash Kumar – Aye  
Hon. James A. Reeder – Aye

cc: Alina Hudak, Deputy Mayor/County Manager  
Bruce Libhaber, Assistant County Attorney  
Alexander Bokor, Assistant County Attorney

*36*